



Kombo & 2 others v Uhutta Properties Limited & 3 others (Environment and Land Case 89 of 2021) [2026] KEELC 2619 (KLR) (21 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2619 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND CASE 89 OF 2021**

**LL NAIKUNI, J
APRIL 21, 2026**

BETWEEN

**SOMBO K KOMBO, DZOMBO M KOMBO & KOMBO W
MWAMUMBO PLAINTIFF**

AND

**UHUTTA PROPERTIES LIMITED 1ST DEFENDANT
THE LAND REGISTRAR KWALE 2ND DEFENDANT**

AND

MAISHA MABATI MILLS LIMITED PROPOSED DEFENDANT

AND

**NEW CONNECTIONS SUPPLIERS LIMITED INTENDED INTERESTED
PARTY**

RULING

I. Introduction

1. Before this Honourable Court for its determination is the Notice of Motion application dated 2nd July 2025 filed by New Connections Suppliers Limited, the Proposed Interested Party/Applicant under the provision of ArticleS 50 and 159 of *the Constitution* of Kenya, 2010, Order 1 Rule 10 (2), Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law.
2. Upon service of the Application, the Plaintiffs/Respondents, opposed the application through a Preliminary objection dated 24th October, 2025, contending that the Court is “functus officio” following delivery of judgment on 24th June, 2024 and execution of the decree on 1st July, 2024.



II. The case by the Proposed Interested Party/Applicant

3. The Applicant sought for the following orders: -
 - a. Spent.
 - b. That New Connections Suppliers Limited be granted leave to be joined as an Interested Party in these proceedings for purposes of safeguarding its proprietary interest in Kwale/South Samburu/112.
 - c. That upon being joined, New Connections Suppliers Limited be granted leave to file appropriate pleadings and/or submissions as may be necessary.
 - d. That the costs of this Application be in the cause.
4. The application was premised on the grounds, facts and testimony on the face of the application and further supported by the 11 paragraphed annexed affidavit of WANINI JAMES WANGANGA, an advocate dated the same day. The Affiant averred as follows that:-
 - a. He was an adult male of sound mind and had explicit instructions to appear for and on behalf of the Intended Interested Party herein, hence was competent to swear the Affidavit. (Attached in the affidavit was a copy of the instruction note marked as “WJW - 1”).
 - b. At all material times the Intended Interested Party, New Connections Suppliers Limited, was the immediate former registered proprietor of the parcel of land known as Kwale/South Samburu/112, (Hereinafter referred to as “The Suit Property”).
 - c. Sometime in July 2020, and without notice of any defect to title and for valuable consideration, the Intended Interested Party transferred the suit property to the current Applicant in the suit, Maisha Mabati Limited, and was Issued with titles in respect of the said property by the 2nd Defendant on 20th September 2020, titles which were free of any encumbrances whatsoever. (Attached hereto and marked as “WJW - 2” were copies of the respective Special Resolution dated 30th July 2020 emanating from the 1st Defendant; the Pre-Registration Searches dated 24th September 2019 together with copies of the Green Card Searches; Clearance from the National Land Commission dated 24th January 2019 vide Ref No. NLC/GEN.CORRE/VOL.VIII(54); Agreement for Sale dated 30th July 2020; Chief’s Letter dated 28th August 2020 containing a list of community members compensated by the Applicant; Transfer Instruments dated 10th September, 2020; and copy of Title together with post-registration Searches dated 29th September, 2020).
 - d. It was with utmost shock that the Intended Interested Party came to learn of this suit on the 23rd June, 2025, and that the same had proceeded and culminated in a Judgment of 24th June, 2024 and a resultant Decree of 1st July, 2024 directing the cancellation of Title against the 1st Defendant. The same property that had belonged to the Intended Interested Party had passed on legally and lawfully to the Applicant herein, and was now outlandishly in the hands of third parties claiming to be legitimate owners illegally and unlawfully.
 - e. The subject matter of this suit directly related to the said parcel, and the outcome of these proceedings would have a direct impact on the legal interests and rights of “New Connections Suppliers Limited” as the previous owners, who would now be accused of passing bad title and thus suffer negative legal ramifications. The proceedings in this matter were not only a complete and utter abuse of court process but also pellucidly prejudicial in nature. By implication, the



Judgment of the matter insinuated that the Intended Interested Party had passed bad title. The Applicant's involvement and joinder had been completely disregarded unfairly in the proceedings.

- f. As a previous proprietary owner of the suit property Kwale/South Samburu/112, it was crucial that the Intended Interested Party be joined in this suit to give proper insight and clarity on the Issue of ownership and the preceding and/or antecedent dealings in as far as the said suit property was concerned.
- g. This Honourable Court had the power and discretion, in light of the prevailing unique circumstances, to Issue the Orders sought by the Intended Interested Party with the sole purpose of preserving the natural rights to be heard within the law and to protect the suit property, noting that the Applicant had not been joined in the suit.
- h. The Application was brought without any delay whatsoever.
- i. It was in the interest of justice and fairness that the matter be certified as urgent and the Orders sought in the Notice of Motion Application be granted as prayed.
- j. He swore the Affidavit in support of the Application herein.

III. The responses by the Plaintiffs'

5. The Plaintiffs filed a Preliminary objection dated 24th October, 2025 in response to the Notice of Motion application dated 2nd July, 2025 premised on the following grounds:
 - a. The Proposed Interested Party's application dated 2nd July, 2025 has been overtaken by events as the Judgment delivered on 24th June, 2024 had already been executed fully und there is nothing to join the suit for and seek stay and/ or to set aside.
 - b. The Honourable Court lacks jurisdiction to hear and determine the application dated 2nd July, 2025 as the Court was now "Functus Officio".

IV. Submissions

6. On the 23rd October, 2025, while the Parties were present in Court, they were directed to have the Notice of Motion application dated 2nd July, 2025 filed by the Proposed Intended Interested Party and the Notice of Preliminary Objection dated 24th October, 2025, be disposed of by way of written submissions. All the parties complied with the Court's directions. Pursuant thereto, the Honourable Court delivered its Ruling 21st April, 2026 accordingly.

A. The Written Submissions by the Plaintiffs

1. The Plaintiffs through the Law firm of Messrs. Ondabu & Co Advocates filed their written submissions dated 24th October, 2025. Mr. Ondabu Advocate submitted that what was before the Honourable Court for determination is the Plaintiff's Preliminary Objection dated 24th October, 2025 premised on the above stated grounds.
2. The Proposed Interested Party's application dated 2nd July, 2025 was seeking orders for joinder into the suit and leave to file pleadings once the order for joinder is granted.
3. On the background of the Application now before Court, the Learned Counsel submitted that the Plaintiffs filed the suit herein against the Defendants claiming the suit land known as Kwale/South Samburu/90 way back in the year 2021. The suit was heard on merit after parties were heard and



provided their relevant documentary evidence. Having been heard the matter on merit the Honourable Court on 24th June, 2024 delivered judgment with a resultant decree dated 1st July, 2024. The Court in its Judgment cancelled the name and entry of the 1st Defendant as the proprietor of the suit land known as Kwale/South Samburu/90.

4. The 2nd Defendant complied with the Decree of the Court and cancelled the entry of the 1st Defendant as the registered owner thereby having the Judgment of the Honourable Court fully executed. During the hearing and determination of the suit the Defendants never at all indicated to the Court that there is any party with any interest on the suit land. The Judgment having been rendered and executed, the Proposed Interested Party had filed this application dated 2nd July, 2025 seeking joinder into the suit.
5. Proposed Interested Party's claim (if any) was a boundary dispute which can only be addressed by The County Land Registrar-Kwale under the provision of Section 18 of The Land Registration Act, 2012 since the Proposed Interest Party's parcel of land was Title Number Kwale/South Samburu/112 which was distinct from Title No. Kwale/South Samburu/90. If the Proposed Interested Party had any claim against the Plaintiff, the same lies elsewhere and the Court having delivered Judgment which had been fully executed the Court is functus officio.
6. The Learned Counsel relied on the following two (2) Issues for determination by this Honourable Court. Firstly, on whether the Proposed Interested Party can be joined in a suit which had been fully heard, Judgment delivered and executed. The Learned Counsel submitted that it is common ground that the case filed herein by the Plaintiffs against the Defendants was heard and subsequently a judgment was delivered on 24th June, 2024. The said Judgment was duly executed by a decree of the Court dated 1st July, 2024 where the 2nd Defendant having been ordered to cancel the entry in respect of suit land known as Kwale/South Samburu/90 which was then registered in the 1st Defendant's name and register the same in favour of the Plaintiffs having made their case as against the Defendants.
7. Judgement in this matter was delivered after a full hearing where the litigants were heard on their respective prepositions, suffice to say the judgment delivered by the Court did not come to light from an interlocutory judgment but after a full hearing where the case was heard on merit.
8. According to the Learned Counsel, it was important to note that the Plaintiffs only sought reliefs against the Defendants, they never sought any relief against the now Proposed Interested Party. During the pendency of the suit none of the litigants sought to have the Proposed Interested Party joined as a party to the suit and this begs the question whether or not the Proposed Interested Party herein could be joined and admitted as a party into a suit which had long been heard and determined. In addition, the primary question would be the purpose for such joinder and whether a court of law can join parties in whatsoever capacity for aesthetic/cosmetic purposes. It was their considered view that joinder or admission of a party could be made and/or undertaken when all the Issues in dispute had been heard and determined and a final judgment delivered in the matter such that the entry of a judgment terminates and concludes Issues in dispute and ex post facto, the proceedings are deemed to have terminated, save for auxiliary proceedings, inter alia, execution and enforcement proceedings and parties cannot be added to introduce new Issues long after judgment. They were guided by the decision in of:- "Kingori v Chege & 3 Others (2002)2KLR 243" where Justice Nambuye, J (as she then was) held that:-

“.....parties cannot be added so as to introduce quite a new cause of action or to alter the nature of the suit. Necessary parties who ought to have been joined are parties who are necessary to the constitution of the suit without whom no decree at all can be passed. Therefore, in case of a Defendant two conditions must be met: (1) There must be a right to some relief against him in respect of the matter involved in the suit. (2) His presence



should be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit being one without whom no decree can be made effectively and one whose presence is necessary for complete and final decision on the questions involved in the proceedings. A proper party is one who has a designed subsisting direct and substantive interest in the Issues arising in the litigation which interest will be recognizable in the Court of law being an interest, which the Court will enforce. A person who is only indicated or commercially interested in the proceedings is not entitled to be added as a party. But a person may be added as a Defendant though no relief may be claimed against him provided his presence is proper for a complete and final decision of the question involved in the suit and such a person is called a proper party as distinguished from a necessary party... Order 1 rule 10 allows the Court to add a Defendant on its own motion or upon application by either party either orally or formally by summons in chambers under Order 1 rule 22. Here the party has not moved on its own but has been moved by the intending party on its own formally. The use of the words "either party" denotes that the formal move has to be made by a party already participating in the proceedings and it would mean that an intending party cannot come on his own and choose which position he wants."

15. The Proposed Interested Party could only apply to be joined and seek such orders albeit during the pendency of the suit. The fact that the suit herein had long being adjudicated upon and determined, the proposed admission to adjudicate on new Issues long after Judgment would serve no useful purpose and thus the same if allowed shall be in futility. They relied in Nairobi Environment and Land Court case of:- "ELC No. 663 of 2005: Mohamed Slaka Ali v Sunpalm Limited & 4 Others" where Justice Oguttu Mboya held:-

"Arising from the foregoing, it Is my finding and holding that an application, like the one before hand, can only be mounted and lodged at any stage of the proceedings, provided that the suit is still in existence and the proceedings are continuing?, so that the joined parties are able in assist the court in the adjudication of the dispute.

Arising from the foregoing, my answer to Issue number one is to the effect that the Application by and on behalf of the Proposed Interested Parties who are seeking to be joined into the matter long after the delivery of the judgement is actually incompetent and legally untenable."

16. Secondly, on whether the Proposed Interested Party's claim if any lies against the Plaintiffs or the 1st Defendant. The Learned Counsel submitted that the proposed interested party was seeking joinder into a suit which has been determined. The law never allowed a Proposed Interested Party to propagate a cause of action separate and distinct from the one that was canvassed by the primary parties. It was therefore safe to say, an Proposed Interested Party could also not procure and or partake of a substantive order in a suit after Judgment, either in the manner propagated by the Proposed Interested Party herein or otherwise as it was not a party and the reliefs sought were only between the primary litigants. They relied on Supreme Court of Kenya decision in the case of:- "Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others [2014] eKLR" where the court stated and held thus:-

"We cannot exercise our discretion to enjoin a party that disguises itself as an Interested Party, while in actual fact merely seeking to institute fresh cause. On this point, we are guided by the principle which we had pronounced in the Mumo Matemo case (at paragraph 24), as follows:



A suit in Court is a ‘solemn’ process, ‘owned’ solely by the parties. This is the reason why there are laws and Rules, under the Civil Procedure Code, regarding Parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit, on the grounds of defective pleadings.”

17. It is as well a common ground that the court heard and determined the subject matter culminating into a Judgment which was delivered in favour of the Plaintiffs, who the Court ordered cancellation of registration of the suit land known as Kwale/South Samburu/90 in the name of the 1st Defendant and the same be registered in favour of the Plaintiffs. Notably, the said Judgment had never been challenged and/or set aside by the litigants thereto. Nevertheless, the Proposed Interested Party is before the court and seeking joinder, the Proposed Interested Party is inviting the Court to reinvent the wheel. It was their humble submission that the orders for by and on behalf of the Proposed Interested Party, would if granted be tantamount to sitting on appeal on the decision of the trial court. They relied on the decision in Mombasa Environment and Land Court case of:- “Javan Lewa Muye v Shiva Enterprises Ltd & 3 others; Mbeyu Mwandaza Mwangoni (Interested Party) [2019] eKLR - Environment and Land Case 160 of 2014” where Justice C.K. Yano held:-

SUBPARA 14.

Has the Applicant demonstrated that she will suffer substantial loss if the order of stay is not granted? The applicant submitted that the decree herein has been partially executed. The respondents on their part have submitted that the decree has been fully executed and the original title has been subdivided and new titles Issued. The applicants however, failed to demonstrate to this court how she will suffer substantial loss or that she is already suffering substantial loss from the implementation of the decree herein. The applicant herself did not file any affidavit in support of the application. It is not enough for the applicant to merely state, through her advocate, that she will suffer substantial loss if the order of stay is not granted.....

SUBPARA 19.

For the foregoing reasons, I find that the Notice of Motion dated 3rd October 2018 as lacking in merit and hereby dismiss it with costs to the respondents.

18. If the Court falls into that trap such an endeavour would occasion violence to the rule of law and breed anarchy, as well as legal absurdity. It was therefore their humble view that the reliefs sought by and on behalf of the Proposed Interested Party herein are not only misconceived but are not awardable as the Court upon delivery of Judgment became functus officio and nothing was remaining to adjudicate upon. Furthermore, the Proposed Interested Party is aware that the suit property was transferred and registered in the Plaintiffs favour, but yet again seeking to procure orders in a suit they are not parties and Judgment has already been delivered and fully executed.
19. Further the Honourable Court they relied on the decision in the case of:- “Mombasa ELC Misc. Application No. 43 of 2019 - R v District Land Officer Kilifi & Others”, where Justice L.L. Naikuni stated that:

“Now applying these legal parameters to the instant case. In all fairness, there is no doubt that there is a decree dated 30/9/2020 upon the Applicants considers aggrieved against. However, the Honourable Court has already noted that the decree was made close to four (4) years ago. Clearly the period of making the said order is with unreasonable and inordinate delay. Additionally, there is no discovery of new and important matter or evidence which



after the exercise of due diligence, was not within the knowledge or could not be produced by then at the time when the decree was passed or the order made; or account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree or order. Therefore, for these reasons whatsoever, the prayer sought by the Applicants for settling aside or review of the said judgment and causing the hearing to commence a fresh cannot succeed.”

20. They further relied on the ruling of this Court in this matter rendered on 30th September, 2025 by Hon Mr. Justice LL Naikuni where he declared that the Court has become functus officio and therefore would not address a similar application for joinder made by Maisha Mabati Mills Limited. They submitted that the Preliminary Objection dated 24th October, 2025 was merited and should be upheld and further that the application dated 2nd July, 2025 be dismissed with costs to the Plaintiffs.

B. The Written Submissions by the Intended Interested Party

21. The Intended Interested Party through the Law firm of Messrs. J & J Company Advocates filed their written submissions dated 1st July, 2025. Mr. Ng’ang’a Advocates submitted that the Intended Interested Party, New Connections Suppliers Limited, had moved this Honourable Court vide an Application dated the 2nd July, 2025 seeking to be joined as an Interested Party in this suit, pursuant to Order 1 Rule 10(2) of the Civil Procedure Rules, 2010. The application was anchored on the ground that the intended interest herein was the former registered proprietor of the suit property, to wit, Kwale/South Samburu/112, and stands to be adversely affected by any orders Issued in these proceedings if not afforded an opportunity to be heard.
22. The Learned Counsel further wished to submit on the Proposed 3rd Defendant/Applicant’s Application dated the 5th May, 2025 seeking to set aside Court’s Judgment and be joined into the suit as a Defendant and also for the matter to be heard De Novo.
23. The Learned Counsel relied on the following (two) Issues for determination by the Honourable Court. Firstly, on whether the Intended Interested Party had demonstrated sufficient interest in the subject matter of the proceedings to warrant being joined to give insight and clarity. The Learned Counsel submitted that the provision of Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010 provides:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
24. In the case of “Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others [2014] eKLR”, the Supreme Court held that an Interested Party must demonstrate a personal interest or stake in the matter, which is clearly identifiable and proximate, and not merely peripheral.
25. According to the Learned Counsel, in the instant case, the Intended Interested Party is the former registered owner of the suit property, Kwale/South Samburu/112, which was the subject of these proceedings. Any orders made herein would directly affect its proprietary interests. Where the court failed to join the intended Defendant/Applicant into the suit after setting aside its Judgment, the Intended Interested party was in danger of being accused of passing bad title.



26. Further, in the case of:- “Francis Kariuki Muruatetu & Another v Republic & 5 Others [2016] eKLR”, the Supreme Court stated that an Interested Party must demonstrate the prejudice likely to be suffered if excluded from the proceedings. The Intended Interested Party avers that unless joined, it risked being condemned unheard in a matter involving the suit property. The latter shall be exposed to legal ramifications in as far as passing bad title was concerned. The ownership of the suit property was transferred legally and lawfully. They prayed that their Application dated the 2nd July, 2025 be allowed in the interest of Justice.
27. Secondly, on whether the proposed 3rd Defendant/ Applicant had demonstrated sufficient interest in the subject matter of the proceedings to warrant being joined as proposed Defendant after Judgment. The Learned Counsel submitted that they had read the proposed 3rd Defendant/Applicants dated the 5th May, 2025 and wished align with the its contents and their submissions thereof. They had depicted a limpid and unerring state of affairs insofar the suit property is concerned.
28. Sometimes in July 2020 and without notice of any defect to title and for valuable consideration, the Applicant namely, “MAISHA MABATI MILLS LIMITED” in this suit purchased from “NEW CONNECTIONS SUPPLIERS LIMITED” which happens to be the Intended Interested Party herein, the suit property and was Issued with titles in respect of the said Properties by the 2nd Defendant herein on 20th September 2020, titles which were free of any encumbrances whatsoever. It was with utmost shock that the intended interested Party came to learn of this suit on the 23rd June, 2025 and that the same had already proceeded and culminated to a Judgment of 24th June, 2024 and a resultant Decree of 1st July, 2024 directing the cancellation of Title against the 1st Defendant.
29. The Learned Counsel submitted that the proceedings in this matter was not only a complete and utter abuse of court process but also pellucidly prejudicial in nature. The Applicant’s involvement and joinder was completely disregarded unfairly. They prayed that this Honourable Court does allow the proposed 3rd Defendant/Applicant’s Application dated the 5th May, 2025 to enable all parties to participate in the proceedings De Novo in the establishment of true ownership of the said suit property.
30. They relied on a similar case of “Chege & 2 others (Being the Administrators Ad Litem of the Estate of Chege Ng’ang’a alias Chege Nganga alias David Chege Ng’ang’a -Deceased) v Ngundu Farmers’ Co-operative Society Limited & 2 others; Kimani (Being the Administrator of the Estate of Asaphkimani Kuria- Deceased) (Interested Party)(Environment & Land Case 335 of 2018) [2024] KEELC 3818 (KLR) (9 May 2024)(Ruling)”, where Honourable Justice J.A MOGENI, J held at that:
- “49. There is no doubt that this court has jurisdiction to join a party to a suit at any stage of the proceedings. Order 1 Rule 10(1) of the Civil Procedure Rules is the authority for that proposition. It provides as follows:
- (2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
50. In the case of Lilian Wairimu Ngatho & Another-vs- Moki Savings Co -operative Society Limited & Another [2014] eKLR the court, (Nvamweya J.,) held as follows:



“The provisions of Order 1 Rule 10(2) state that joinder of a party can be made “at any stage of the proceedings”. “Proceedings” are defined in Black’s Law Dictionary Ninth Edition at page 1324 as “the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment”. A party can therefore only be joined to a suit at anytime during the pendency of the suit, but not after the same has been concluded. This finding is premised on the basis that the purpose for joinder is to enable the court effectually and completely adjudicate upon and settle all questions involved in a suit. It is therefore of no use if a party seeks to be joined when the court has already made its findings on the Issues arising.” Similarly, the main purpose for joining a party as a Defendant under Order 1 Rule 3 of the Civil Procedure Rules is to claim some relief from the said party, and therefore such joinder can only be made during the pendency of a suit. As this court has declined to set aside the judgment herein, there is no suit pending before this court, and the Applicants cannot therefore be joined as parties at this stage.”

51. In the instant application a prayer for the setting aside of judgment was made contemporaneously with the prayer for joinder.
 52. In this court’s view where the two prayers are sought in that manner, the application is competent.”
31. According to the Learned Counsel, the proposed 3rd Defendant/Applicant had come before Court with a similar Application seeking that it set aside Judgment and Join it as a Defendant in the suit. The Application dated 5th May, 2025 was competent. They prayed it be allowed as well.
 32. In conclusion, the Learned Counsel prayed that the Court considers their humble submission and used its discretion and allowed both Applications for the intended interested party and that of the proposed 3rd Defendant with costs in the cause in the interest of justice.

V. Analysis and Determination

33. I have considered the Notice of Motion application dated 2nd July, 2025 filed by the Intended Interested Party, the Preliminary Objection dated 24th October, 2025 filed by the Plaintiffs, the Supporting Affidavit sworn by Wanini James Wanganga, and the written submissions filed by both parties, the relevant provisions of *the Constitution* of Kenya, 2010 and statutes.
34. From the pleadings and arguments placed before this Honourable Court, in order for the Court to reach an informed, Justs, Fair and Reasonable decision, the following five (5) Issues fall for determination in relation to the instant application: -
 - a. Whether this Honourable Court retains jurisdiction to entertain an application for joinder after Judgment has been delivered and fully executed.
 - b. Whether the Intended Interested Party has demonstrated sufficient proprietary interest in the suit property to warrant joinder at this stage.
 - c. Whether the doctrine of functus officio bars the Court from reopening proceedings for purposes of joinder.



- d. Whether the prejudice alleged by the Intended Interested Party outweighs the prejudice that would be occasioned to the Plaintiffs if joinder were allowed post-judgment.
- e. What orders should Issue as to costs of the application.

Issue No. a). Whether this Honourable Court retains jurisdiction to entertain an application for joinder after Judgment has been delivered and fully executed.

35. Under this sub-heading the Honourable Court will decipher whether, in light of the doctrine of *functus officio*, it retains jurisdiction to entertain an application for joinder once Judgment has been delivered and the decree executed. Legally speaking, the starting point is the provision of Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010, which empowers the Court to add parties “at any stage of the proceedings” where their presence is necessary for complete adjudication of the Issues. It is imperative that at this juncture there will be need to critically assess the operative phrase “at any stage of the proceedings”. The High Court has deliberated extensively on this Legal point. Thus, there will be no need to re – invent the wheel. In a nutshell, Jurisprudence has consistently held that this provision applies only “...while proceedings are pending”, not after final Judgment has been rendered and executed.
36. To seek solance on this point, I have cited the case of:- “Kingori - v - Chege & 3 Others [2002] 2 KLR 243”, Justice Nambuye (as she then was) held that parties cannot be added so as to introduce a new cause of action or alter the nature of the suit once Judgment has been delivered. The Court emphasized that joinder is permissible only where the party is necessary to enable the Court to effectively and completely adjudicate upon the questions in dispute.
37. Similarly, the Court in the case of:- “Gladys Nduku Nthuki – v – Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)[2022] KEHC 2227 (KLR)”, reiterated the longstanding test for joinder, as established in the case of:- “Kingori – v – Chege & 3 Others [2002] 2 KLR 243”, outlining the factors to consider in applications for joinder of parties. These facts include whether the party is necessary and proper, and whether their participation would avoid the multiplicity of proceedings. The Court held that when a party is directly affected by a decree, the court should exercise its discretion in favor of including them. Additionally, the Court referenced the decision of the Court of Appeal in Tanzania in the case of:- “Tang Gas Distributors Limited v Said & Others [2014] EA 448”, where the Court stated that:-

“the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after Judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.”

38. Regarding joinder after Judgment. The Court of Appeal in the case of:- “Rose Wakanyi Karanja & 3 others v Geoffrey Chege Kirundi & another; Everton Coal Enterprises Limited (Interested Party) [2020] KECA 616 (KLR)” held:-

“However, there are exceptional circumstances that could justify a court to enjoin a party even after Judgment has been delivered. One such exception is where a matter has been determined and adverse orders Issued against a party who was neither given notice of the suit nor heard on the Issue in dispute, as was the case in this appeal.”



39. Similarly, in the case of:- “Mohamed Salim Ali v Sunpalm Limited & 4 Others (ELC No. 663 of 2005)”, Justice Oguttu Mboya held that joinder can only be mounted while proceedings are ongoing, and that applications filed after delivery of Judgment are incompetent, a nullity and legally untenable.
40. The Supreme Court in case of:- “Communications Commission of Kenya & 3 Others v Royal Media Services Limited & 7 Others [Supra]” reinforced this principle, cautioning that joinder cannot be used to disguise fresh causes of action after Judgment, as litigation is a solemn process owned by the parties and must come to an end.
41. In the case of:- “Yana v District Land Adjudication Settlement Officer Kilifi & 2 Others; Kavita Investments Limited (Proposed Interested Party) (ELC Misc. Application No. 43 of 2019) [2025] KEELC 8632 (KLR)”, Justice Olola reiterated that applications for joinder or review filed years after Judgment, without discovery of new evidence or error apparent on the record, cannot succeed as they offend the principle of finality of litigation.
42. Accordingly, this Court strongly discern and finds that it lacks jurisdiction to entertain the application for joinder dated 2nd July, 2025. The proceedings herein were concluded by the Judgment delivered on 24th June, 2024 and Decree executed on 1st July, 2024. The substratum of the suit has been extinguished, and the Court is functus officio. The proper recourse for the Intended Interested Party lies in instituting a fresh suit or pursuing appellate remedies, not joinder in a finalized matter.

Issue No.b). Whether the Intended Interested Party has demonstrated sufficient proprietary interest in the suit property to warrant joinder at this stage.

43. Under this sub-heading the Honourable Court will decipher whether the Intended Interested Party, New Connections Suppliers Limited, has demonstrated a sufficient and proximate proprietary interest in the suit property to justify joinder, notwithstanding that judgment has already been delivered and executed.
44. The law on joinder is anchored in the provision of Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010, which empowers the Court to add a party “whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit.” The jurisprudence has clarified that the interest must be direct, legal, and proximate, not peripheral or commercial.
45. In the case of:- “Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others [2014] eKLR”, the Supreme Court held that an Interested Party must demonstrate a personal stake in the matter, clearly identifiable and proximate, and not merely peripheral. Additionally, in the case of:- “Francis Karioko Muruatetu (Supra)”, the Court emphasized that prejudice likely to be suffered if excluded must be shown.
46. The Intended Interested Party herein avers that it was the immediate former registered proprietor of Kwale/South Samburu/112, having transferred the property to Maisha Mabati Mills Limited in 2020 for valuable consideration. It fears being accused of passing bad title if not joined, given that the judgment of 24th June 2024 cancelled the title of the 1st Defendant and altered ownership records. On the face of it, this demonstrates a direct proprietary interest in the antecedent dealings of the suit property.
47. However, the timing of the application is critical. In the case of:- “Nyota v Omanwa & 5 Others; Nyota (Interested Party) [2025] KEELC 7880 (KLR)”, the Court held that while an Interested Party may demonstrate sufficient interest, joinder cannot be entertained after judgment has been delivered and executed, as the substratum of the suit has been extinguished. Likewise, in the case of:-



“Yana v District Land Adjudication Settlement Officer Kilifi & 2 Others; Kavita Investments Limited (Proposed Interested Party) [2025] KEELC 8632 (KLR)”, Justice Olola reiterated that even where proprietary interest is established, joinder post-judgment is legally untenable absent discovery of new evidence or review grounds under the provision of Section 80 of the *Civil Procedure Act*, Cap. 21.

48. The Court must balance the prejudice alleged by the Intended Interested Party against the principle of finality of litigation. While the Intended Interested Party has demonstrated a proprietary nexus to the suit property, the application is fatally undermined by the fact that judgment has already been executed. Allowing joinder at this stage would amount to reopening concluded litigation, contrary to the doctrine of *functus officio* and the need for certainty in property rights.
49. Accordingly, the Court finds that although the Intended Interested Party has demonstrated sufficient proprietary interest in the suit property, such interest cannot warrant joinder at this stage, as the proceedings have been concluded and the decree executed. This is not a case of procedural technicalities under the provision of Article 159 (2) (d) of *the Constitution* of Kenya, 2010. Ideally, the proper recourse lies in instituting a fresh suit or pursuing appellate remedies, not joinder in a finalized matter.

Issue No. c). Whether the doctrine of *functus officio* bars the Court from reopening proceedings for purposes of joinder

50. Under this sub-heading the Honourable Court will decipher whether “the doctrine of *functus officio*” operates to bar the re - opening of proceedings for purposes of joinder after judgment has been delivered and executed. In opposition to the application for joinder, the Plaintiffs in their Preliminary Objection, challenged this court’s jurisdiction to hear and determine the applicant’s Notice of Motion application. It has been held in several decisions that jurisdiction is a preliminary Issue and ought to be dealt with at the onset, given that without jurisdiction, a court is obligated to down its tools. In the case of:- “Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others SC Application No. 2 of 2011 [2012] eKLR” we noted as follows:-

“(68) A Court’s jurisdiction flows from either *the Constitution* or Legislation or both. Thus, a Court of Law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by Law”

51. The challenge on the jurisdiction of this Court raised by the Plaintiffs is two-pronged. First that the Judgement earlier on Issued by the court revoking the 1st Defendant’s title and reverting it back to the Plaintiff has already been executed and thus the prayer to stay execution of the same has been overtaken by events. Secondly, that the court is “*functus officio*” having delivered its mandate through the Judgment on record which has been executed.
52. Critically assessing the filed pleadings that have been placed before me, it is clear that the Plaintiffs executed the Judgement Issued in their favour. The court in its discussions also expressed the irregularity with which the 1st Defendant had obtained title and thereafter had it cancelled forthwith. The intended 3rd Defendant has stated that it purchased the suit property from the 1st Defendant and has the intention of defending its interest over the suit property through this court.
53. In my humble view, to entertain the application will be akin to opening up pleadings once more to allow a new party to join in and ventilate its case. This is clearly impossible for the fact that a determination has already been made as to the proprietorship of the property and the decision duly implemented. Thus, I am in agreement with the Plaintiffs that the Applicant has made its application



a little too late and thus as stated that prayer has already been overtaken by events. It is a case of closing the stable when the horse has already bolted.

54. I wish to further discuss the Issue of the court being “functus officio” in order for me to cement my reasoning above. The doctrine of functus officio is a well-established principle of law which dictates that once a court has performed its function by delivering a final Judgment, it cannot revisit the merits of the case except under limited statutory exceptions such as review under the provision of Section 80 of the *Civil Procedure Act*, Cap. 21 and Order 45 of the Civil Procedure Rules, 2010 or correction of clerical errors under Section 99 of the *Civil Procedure Act*, Cap. 21. The rationale is to preserve the finality of litigation and prevent endless reopening of disputes.

55. This court has considered the application and the submissions therein. The doctrine of functus officio was considered by the Court of Appeal in the case of:- “Telkom Kenya limited v John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya limited) (2014) eKLR”, where the court held that:-

“Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon.”

56. The Plaintiffs stated that the court upon delivering the Judgment on became functus officio. It is not contested that on Judgment in this matter was delivered on 24th June, 2024 and execution of the decree done on 1st July, 2024. In the case of:- “Telkom Kenya Limited v John Ochanda (suing on his behalf and on behalf of 996 former Employees of Telkom Kenya Ltd (supra))”, the Court of Appeal held as follows on the functus officio doctrine:-

“Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon--

The general rule that final decision of a court cannot be re - opened derives from the decision of the English Court of Appeal in re - St Nazaire Co, (1879), 12 Ch. D 88. The basis for it was that the power to rehear was transferred by the Judicature Acts of the appellate division. The rule applied only after the formal judgment had been drawn up, Issued and entered, and was subject to two exceptions. ---”

57. The Supreme Court of Kenya in the case of “Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 Others (2013) eKLR”, cited with approval an excerpt from an article by Daniel Malan Pretorius entitled, “The Origins of the Functus Officio Doctrine, with Special Reference to its Application in Administrative Law” (2005) 122 SALJ 832 which reads:-

“The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter...The [principle] is that once such a decision has been given, it is (subject to any right of appeal to superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.”



58. The provision of Section 99 of the *Civil Procedure Act*, Cap. 21 provides exceptions to the doctrine of functus officio in the following terms-

“Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.”

59. It is clear that the doctrine of functus officio does not bar a court from entertaining a case it has already decided but prevents it from revisiting the matter on a merit-based re-engagement once final Judgment has been entered and a Decree Issued, as is the case herein.

60. The court also relied on the holding in the case of “Jersey Evening Post Limited v Al Thani (2002) JLR 542 at 550” to the effect that:

“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling on adjudication must be taken to a higher court if that right is available.”

61. More recently, in this same matter being “Kombo & 2 Others v Uhutta Properties Limited & Another; Maisha Mabati Mills Ltd (Objector) (ELC No. 89 of 2021) [2025] KEELC 6547 (KLR)”, Justice L.L. Naikuni ruled that once Judgment has been delivered and executed, “.....the Court becomes functus officio and cannot entertain joinder applications, even where parties allege prejudice.....”. The doctrine of functus officio is anchored in common law and recognized in Kenyan jurisprudence. It dictates that once a Court has performed its function by delivering final judgment, it cannot revisit the merits of the case except under limited statutory exceptions such as review under Section 80 of the *Civil Procedure Act* and Order 45 CPR, or correction of clerical errors.

62. Applying these principles to the present matter, this Court finds that judgment was delivered on 24th June 2024 and decree executed on 1st July 2024. The substratum of the suit has been extinguished, and the Court is functus officio. The Intended Interested Party’s application for joinder, though grounded on proprietary interest, seeks to reopen proceedings already concluded. This is legally untenable and would amount to the Court sitting on appeal against its own judgment.

63. Accordingly, the Court holds that the doctrine of functus officio bars reopening of proceedings for purposes of joinder in this matter. Once more, I reiterate that the proper recourse for the Intended Interested Party lies in instituting a fresh suit or pursuing Appellate remedies. Certainly, it is not on a joinder in a finalized case.

Issue No. d). Whether the prejudice alleged by the Intended Interested Party outweighs the prejudice that would be occasioned to the Plaintiffs if joinder were allowed Post - Judgment.

64. Under this sub-heading the Honourable Court will decipher whether the prejudice claimed by the Intended Interested Party, New Connections Suppliers Limited, outweighs the prejudice that would be suffered by the Plaintiffs if joinder were permitted after judgment and execution.

65. The Intended Interested Party contends that unless joined, it risks being condemned unheard and accused of passing defective title, thereby exposing it to future litigation and reputational harm. This



concern is not trivial. Proprietary interests in land find their legal basis and are protected under the provision of Article 40 of *the Constitution* of Kenya, 2010, the provision of Section 24, 25 and 26 (1) of the *Land Registration Act*, No. 3 of 2010. These provisions guarantees the right to property and shields owners from arbitrary deprivation. The Intended Interested Party argues that exclusion from the proceedings leaves it vulnerable to collateral attacks, including suits alleging that it conveyed defective title. Such prejudice, if realized, could have significant financial and reputational consequences. The Supreme Court in the case of “Francis Karioko Muruatetu (Supra)” clarified that prejudice must be tangible and demonstrable, not speculative or remote.

66. On the other hand, the Plaintiffs argue that allowing joinder at this stage would undermine the principle of finality of litigation. They rely on the doctrine of *functus officio*, which bars re - opening of proceedings once judgment has been delivered and executed. The Plaintiffs emphasize that they have already secured Judgment on 24th June 2024 and execution on 1st July 2024, resulting in cancellation of the Defendant’s title and vesting of ownership in their favour. To re - open the matter now would unsettle vested rights and amount to sitting on appeal against the Court’s own decision.
67. In the case of:- “Juma & 65 Others v Abdulla & 3 Others (ELC OS No. 40 of 2016) [2024] KEELC 127 (KLR)”, the Court held that re - opening concluded proceedings would occasion prejudice to successful litigants by unsettling vested rights and undermining the certainty of judicial outcomes. Further, in the case of:- “Nyota v Omanwa & 5 Others; Nyota (Interested Party) [2025] KEELC 7880 (KLR)”, the Court observed that while an applicant may demonstrate proprietary interest, joinder Post - Judgment would prejudice the original parties by effectively re-litigating matters already determined, thereby delaying enforcement of rights and creating legal uncertainty.
68. The balancing exercise therefore requires the Court to weigh the prejudice of potential future litigation against the prejudice of reopening a finalized matter. Through Jurisprudence leans heavily towards protecting the integrity of final Judgments. In the case of:- “Yana v District Land Adjudication Settlement Officer Kilifi & 2 Others; Kavita Investments Limited (Proposed Interested Party) [2025] KEELC 8632 (KLR)”, Justice Olola held that prejudice to a proposed party cannot override the prejudice to successful litigants where Judgment has been executed, unless new evidence or review grounds are demonstrated. The Court emphasized that the justice system must prioritize certainty and closure over speculative risks.
69. Applying these principles, the Court finds that while the Intended Interested Party has demonstrated a risk of prejudice if excluded, such prejudice does not outweigh the prejudice that would be occasioned to the Plaintiffs if joinder were allowed post-judgment. The Plaintiffs have already secured Judgment and execution, and re - opening the matter would undermine their vested rights, delay finality, and amount to sitting on appeal against the Court’s own decision. The prejudice to the Plaintiffs and to the justice system at large—through erosion of finality and certainty—would be greater than the prejudice alleged by the Intended Interested Party.
70. Accordingly, the Court holds that the prejudice alleged by the Intended Interested Party cannot justify joinder at this stage. The balance of justice favours protecting the Plaintiffs’ vested rights and upholding the principle of finality of litigation.

Issue No. e). What orders should Issue as to costs of the application.

71. Under this sub-heading the Honourable Court will decipher the appropriate orders as to costs in light of the dismissal of the Intended Interested Party’s application. Costs is an Issue at the discretion of Court. Costs mean the award which is granted to a party at the conclusion of any legal action or



proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 provides that: -

“Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. Provided that the costs of any action, cause or other matter or Issue shall follow the event unless the court or judge shall for good reason otherwise order.”

72. This statutory provision establishes that costs ordinarily follow the event, meaning that the successful party is entitled to costs unless the Court directs otherwise for good reason.
73. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri v Nairobi City County Government [2018] eKLR” and “Kenya Union of Commercial, Food and Allied Workers v Bidco Africa Limited & Another [2015] eKLR”, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise. In the case of “Hussein Muhumed Sirat v Attorney General & Another [2017] eKLR”, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.
74. In the present matter, the Plaintiffs have successfully resisted the application for joinder, which this Court has found to be incompetent and legally untenable. The Plaintiffs have already undergone the expense of defending a concluded suit, and the application has occasioned further unnecessary litigation. To deny them costs would be inequitable.
75. On the other hand, the Intended Interested Party argued that its application was brought in good faith to protect proprietary interests. While the Court acknowledges this, the principle of finality of litigation must prevail. The application has been dismissed, and the Plaintiffs are entitled to costs as the successful parties.
76. Accordingly, the Court finds that the appropriate order is that costs of the application dated 2nd July 2025 shall be borne by the Intended Interested Party and awarded to the Plaintiffs. This is consistent with the provision of Section 27 of the [Civil Procedure Act](#) and the principle that costs follow the event.

VI. Conclusion and Disposition.

77. Having carefully considered the Notice of Motion dated 2nd July, 2025 filed by the Intended Interested Party, the Preliminary Objection dated 24th October, 2025 filed by the Plaintiffs, the Supporting Affidavit sworn by Wanini James Wanganga, and the written submissions filed by both parties, together with the applicable statutory provisions and case law cited, the Honourable Court arrives at the following conclusions:-
 - a. That the Notice of Motion application dated 2nd July, 2025 filed by the Intended Interested Party be and is hereby dismissed in its entirety.
 - b. THAT Notice of Preliminary objection dated 24th October, 2025 filed by the Plaintiffs herein be and is hereby found to be merited and the same is upheld.



- c. That the Honourable Court holds that it is functus officio and therefore lacks jurisdiction to entertain the Intended Interested Party's application for joinder after Judgment was delivered on 24th June, 2024 and Decree executed on 1st July, 2024.
- d. That while the Intended Interested Party has demonstrated a proprietary nexus to the suit property, such interest cannot warrant joinder at this stage as the substratum of the suit has been extinguished, and the proper recourse lies in instituting a fresh suit or pursuing appellate remedies.
- e. That the Honourable Court further finds that the prejudice alleged by the Intended Interested Party does not outweigh the prejudice that would be occasioned to the Plaintiffs if joinder were allowed post-judgment, as reopening the matter would undermine vested rights and the principle of finality of litigation
- f. That the costs of the Notice of Motion application dated 2nd July, 2025 shall be borne by the Intended Interested Party and awarded to the Plaintiffs in accordance with Section 27(1) of the Civil Procedure Act, Cap. 21 to compensate them for the expense of defending a concluded matter.

It Is So Ordered Accordingly.

RULING DELIVERED THROUGH MICROSOFT TEAM VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS 21ST DAY OF APRIL 2026.

.....

**HON. MR. JUSTICE L. L. NAIKUNI,
ENVIRONMENT AND LAND COURT AT KWALE**

Ruling delivered in the presence of:

- a. M/s. Asmaa Maftah, the Court Assistant.
- b. Mr. Ondabu Advocate for the Plaintiffs; and
- c. M/s. Wairimu Advocate holding brief for Mr. Ng'ang'a Advocate for the Intended Interested Party.
- d. Mr. Ashionya Advocate Holding brief for Mr. Nelson Havi Advocate for the 1st Defendant.

